

WILLIAMSON COUNTY AND PROJECT CAPSTONE, INC.

**CHAPTER 381 ECONOMIC DEVELOPMENT
PROGRAM AND AGREEMENT**

This **CHAPTER 381 ECONOMIC DEVELOPMENT PROGRAM AND AGREEMENT** (this "**Agreement**") is made and entered into by and between **WILLIAMSON COUNTY** (hereinafter referred to as "**County**"), a Texas political subdivision, and **APPLE INC.** (hereinafter referred to as "**Company**"), as of the ____ day of December, 2018 (the "**Effective Date**") for the purposes and considerations stated below:

WHEREAS, the Company desires to enter into this Agreement pursuant to Chapter 381 of the Texas Local Government Code (hereinafter referred to as "**Chapter 381**"); and

WHEREAS, the County desires to provide, pursuant to Chapter 381, an incentive to Company to locate in Williamson County, Texas, as defined below; and

WHEREAS, the County has the authority under Chapter 381 to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the County; and

WHEREAS, the County determines that the grants as specified herein to Company will serve the public purpose of promoting local economic development and enhancing business and commercial activity within the County; and

WHEREAS, over a period of years, the Company intends to expend at least \$400,000,000 for the purchase of real property ("**Land**"), as described on the attached **Exhibit "A"**, and the construction thereon of buildings and other improvements (the "**Facility**"), along with all other furniture, fixtures, equipment and other personal property located on the Land or within the Facility (collectively the "**Personal Property**") (the Facility, the Land and the Personal Property are collectively referred to herein as the "**Property**"); and

WHEREAS, the Company intends to create up to 4,000 Full-Time Equivalent Jobs (as defined below) during the Term (as defined below) which will encourage increased economic development in the County, provide significant increases in the County's tax revenues, and improve the County's ability to provide for the health, safety and welfare of its citizens (the "**Purpose**") (the Property, the Full-Time Equivalent Jobs and the Purpose are collectively referred to herein as the "**Project**"); and

WHEREAS, the County has concluded and hereby finds that this Agreement clearly promotes economic development in the County and, as such, meets the requisites under Chapter 381 of the Texas Local Government Code and further, is in the best interests of the County.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM.

The "**Term**" of this Agreement shall be fifteen (15) full tax years commencing on the first full tax year following the Company's creation of a total of 700 Full-Time Equivalent Jobs (the "**Initial Full-Time Equivalent Jobs**").

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) Ad Valorem Taxes. The words "**Ad Valorem Taxes**" shall mean those real and business personal property ad valorem taxes which are required to be paid to the County based on the assessed value of the Property.
- (b) Agreement. The word "**Agreement**" means this Chapter 381 Economic Development Program and Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- (c) Company. The word "**Company**" means Apple Inc. For the purposes of this Agreement, including the address for sending notice, Company's address is Apple Inc., One Apple Park Way, MS: 104-2 TX, Cupertino, CA 95032, Attn: Corporate Tax Department.
- (d) County. The word "**County**" means Williamson County, Texas. For purposes of this Agreement, including the address for sending notice, County's address is 710 Main Street, Suite 101, Georgetown, TX 78626.
- (e) Full-Time Equivalent Job. The words "**Full-Time Equivalent Job**" mean a job filled by an individual who must work for a period of not less than forty (40) hours per week or if less than forty (40) hours a week, the number of hours per week that the Company represents to be in accordance with its designated full-time employment policy as of the reporting year.
- (f) Grant. The word "**Grant**" means a payment to Company under the terms of this Agreement computed with reference to the Ad Valorem Taxes paid to the County by the Company, and payable from the County's general revenue fund in the amount set forth in Section 4 below.
- (g) Grant Submittal Package. The words "**Grant Submittal Package**" mean the documentation required to be supplied to County as further described in Section 3 below as a condition of receipt of any Grant.
- (h) Initial Full-Time Equivalent Job. The words "**Initial Full-Time Equivalent Job**" have the meaning described in Section 1.
- (i) Land. The word "**Land**" shall mean the real property as described in **Exhibit "A"**.
- (j) Project. The word "**Project**" shall have the meaning described in the Recitals above.
- (k) Property. The word "**Property**" means all of that real property and improvements, and personal property described in the Recitals of this Agreement.
- (l) Purpose. The word "**Purpose**" shall have the meaning described in the Recitals above.
- (m) Term. The word "**Term**" means the term of this Agreement set forth in Section 1 above.

SECTION 3. OBLIGATIONS OF COMPANY.

During the Term, Company shall comply with the following terms and conditions:

- (a) In consideration of the County entering into this Agreement, Company will expend at least \$400,000,000 for the acquisition of the Land and development, construction and fit-out of the Project, which may be undertaken in phases, during the Term. Company acknowledges that this Agreement is specifically contingent upon Company's continued use and operation of all or any portion of the Facility throughout the Term. In the event the first phase of the Facility, with an assessed value of at least \$50,000,000 is not constructed by December 31, 2022 (subject to delays of Force Majeure), or if Company discontinues the operation of the Facility, then the County may terminate this Agreement after provision of written notice to Company pursuant to the notice provisions in this Agreement and the Company's failure to cure within the applicable cure period.
- (b) The parties to this Agreement agree that the taxable value of the Property will have a minimum base value of \$50,000,000 throughout the Term.
- (c) The Company agrees to create a total of 4,000 Full-Time Equivalent Jobs, which shall include the Initial Full-Time Equivalent Jobs, as follows:
 - (1) Company shall create an additional 600 Full-Time Equivalent Jobs by the second anniversary of the commencement of the Term for a cumulative total of 1,300 Full-Time Equivalent Jobs;
 - (2) Company shall create an additional 600 Full-Time Equivalent Jobs by the fourth anniversary of the commencement of the Term for a cumulative total of 1,900 Full-Time Equivalent Jobs;
 - (3) Company shall create an additional 600 Full-Time Equivalent Jobs by the sixth anniversary of the commencement of the Term for a cumulative total of 2,500 Full-Time Equivalent Jobs;
 - (4) Company shall create an additional 600 Full-Time Equivalent Jobs by the eighth anniversary of the commencement of the Term for a cumulative total of 3,100 Full-Time Equivalent Jobs;
 - (5) Company shall create an additional 600 Full-Time Equivalent Jobs by the tenth anniversary of the commencement of the Term for a cumulative total of 3,700 Full-Time Equivalent Jobs; and
 - (6) Company shall create an additional 300 Full-Time Equivalent Jobs by the twelfth anniversary of the commencement of the Term for a cumulative total of 4,000 Full-Time Equivalent Jobs.

Failure of Company to provide the required number of Full-Time Equivalent Jobs at any applicable anniversary of the commencement of the Term shall not be considered an Event of Default unless the number of Full-Time Equivalent Jobs actually provided is less than 70% of the required number. If the actual number of Full-Time Equivalent Jobs is at least 70% of the required number, the percentage of the applicable Grant will be reduced by the same percentage that the actual number of Full-Time Equivalent Jobs bears to the required number of Full-Time Equivalent Jobs.

- (d) A Full-Time Equivalent Job may be located in another location other than the Property so long as said location is controlled by the Company and is within the County.
- (e) If the Company has not satisfied the requirements and conditions described in paragraphs (a), (b), and (c) above at the end of any year during the Term, Company shall have an automatic cure period of ninety (90) days after the end of the applicable year to correct such deficiency, but County shall not have any obligation to give Company written notice or notice otherwise concerning any such deficiency.
- (f) On or before the 1st day of March of each calendar year during the Term, Company agrees to submit a Grant Submittal Package to County as follows:
 - (i) Evidence reasonably acceptable to County that Company has paid by January 31st of each year all Ad Valorem Taxes due for the previous tax year.
 - (ii) Company shall provide to County an affidavit stating the total number of Full-Time Equivalent Jobs which are filled by the Company as of December 31 of the previous year before the date of the submittal of the Grant Submittal Package.
 - (iii) Unless otherwise agreed by County and Company, each Grant Submittal Package shall be in a form as reasonably approved by the County and delivered to Company upon execution of this Agreement. If Company fails to timely submit a Grant Submittal Package for a particular year, then County shall give Company written notice of Company's failure to timely submit such Grant Submittal Package, and Company shall have thirty (30) calendar days calculated from the date on which such written notice is given in which to submit such Grant Submittal Package.

SECTION 4. OBLIGATIONS OF COUNTY.

During the Term and so long as an Event of Default has not occurred and is continuing as set forth in this Agreement (provided, however, an Event of Default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure periods as set forth herein), County will comply with the following terms and conditions:

- (a) For each tax year during the Term and beginning in the first tax year of the Term, a Grant in an amount equal to 65% of the Ad Valorem Taxes shall be paid by County from the County's general fund to Company on an annual basis upon Company's satisfaction of the requirements of this Agreement. County agrees to process any Grant to be paid to Company within sixty (60) days after the date of approval by County of the Grant Submittal Package.
- (b) The above-described Grant shall be paid throughout the Term so long as Company complies with the terms and condition of this Agreement. Upon final payment of the Grant, this Agreement shall terminate, and neither County nor Company shall have any further obligations hereunder. All future Ad Valorem Taxes thereafter required to be paid by Company to County shall be retained in full by County, as such may be determined subject to any of Company's rights to challenge or reduce such Ad Valorem Taxes as may exist at such time, or from time to time thereafter.

- (c) Company agrees that it is the sole obligation of Company to present satisfactory evidence to County that all due and owing Ad Valorem Taxes have actually been paid to County. If for any reason, the County is unable to verify that the Ad Valorem Taxes were paid to County, County is under no obligation to tender the Grant to Company. County's determination as to the payment of the Grant to Company is final.
- (d) In the course of verifying Company's compliance with the requirements of this Agreement, County and County's employees, agents, consultants and contractors assigned to perform any portion of the review and inspection may obtain certain information relating to identified or identifiable individuals ("**Personal Data**"). County acknowledges that it shall have no right, title or interest in any Personal Data obtained by it as a result of this Agreement, and will not use the Personal Data for any purpose other than verification of Company's compliance with the requirements of this Agreement. County shall take appropriate legal, organizational and technical measures to ensure the confidentiality of Personal Data, and protect Confidential Data against unauthorized disclosure or access, and against all other unlawful forms of processing, keeping in mind the nature of such data. In the event County collects Personal Data, County shall at all times comply with the Company's lawful instructions regarding the Personal Data, as well as all applicable laws, regulations, and international accords or treaties.

SECTION 5. EVENTS OF DEFAULT; TERMINATION WITH DEFAULT

Each of the following shall constitute an event of default under this Agreement ("**Event of Default**"):

- (a) Failure to locate the Facility on the Property or to provide the required number of Full-Time Equivalent Jobs according to the requirements of Section 3 of this Agreement. County shall notify Company in writing of such Event of Default. Company shall have ninety (90) days after receipt of such notice to cure the Event of Default, and failure to do so may result in the termination of this Agreement by County sending written notice thereof to Company that County's and Company's obligations hereunder shall end mutually as of the date of such notice (unless otherwise set forth herein).
- (b) The dissolution or termination of Company's existence as an active business or concern, Company's insolvency, appointment of receiver for any part of Company's assets, any assignment of all or substantially all of the assets of Company for the benefit of creditors of Company, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Company unless, in the case of involuntary proceedings, such proceedings are discharged within sixty (60) days after filing.
- (c) The failure of Company to pay Ad Valorem Taxes required to be paid to If Company shall fail to perform any other obligation under this Agreement. Company shall have thirty (30) days after receipt of such notice to cure the Event of Default, and failure to do so may result in the termination of this Agreement by County sending written notice thereof to Company that County's and Company's obligations hereunder shall end mutually as of the date of such notice (unless otherwise set forth herein).
- (d) The failure of County to pay all or any portion of a Grant to Company when due and owing under the terms of the Agreement. Company shall notify County in writing of such Event of Default. County shall have thirty (30) days after receipt of such notice to cure the Event of Default and failure to do so may result in the termination of this Agreement by Company

sending written notice thereof to County that Company's and County's obligations hereunder shall end mutually as of the date of such notice (unless otherwise set forth herein); provided, however that Company may pursue such remedies available to it by law or equity, including, specific performance.

SECTION 6. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT.

County may terminate this Agreement without an Event of Default, effective immediately, if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that Chapter 381 Economic Development Agreement grants, such as the Grant included in this Agreement, are deemed to be unconstitutional debt.

SECTION 7. GRANT RECAPTURE.

In the event of an Event of Default by Company which is not cured within the time periods set forth in Section 5 or in the otherwise additional time allowed by County as Company's total cure period, and upon termination by County of this Agreement as set forth above, County may recapture and collect from Company the amount(s) of Grants already paid by County to Company for the one (1) year directly preceding the date of the notice of default. Company shall pay to County the foregoing amount(s) within thirty (30) days after the County makes written demand for same. No further Grants shall then be payable to Company and this Agreement shall be of no further force or effect.

In addition to other available remedies under law and equity, the County shall have all remedies for the collection of the amount(s) of the Grants as provided generally in the Texas Tax Code for the collection of delinquent Ad Valorem Taxes.

SECTION 8. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Williamson County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Williamson County, Texas.
- (c) **Assignment.** Company understands and agrees that the County expressly prohibits Company from selling, transferring, assigning or conveying in any way any rights to receive the Grant without the County's prior written consent.

- (d) Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County to the same. Company warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.
- (e) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (f) Execution of Agreement. The Commissioners Court shall authorize the County Judge to execute this Agreement on behalf of County.
- (g) Force Majeure. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.
- (h) Notices. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above in Section 2. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.
- (i) Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- (j) Sovereign Immunity. Except as such waiver may otherwise be specifically provided for to the contrary under Texas statutes or controlling case law, no party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(Signatures on the following pages)

COMPANY:

APPLE INC.

By: Terry Ryan
Name: Terry Ryan
Title: SR TAX DIRECTOR
Date: 12/12/18

COUNTY:

COUNTY OF WILLIAMSON, TEXAS

By: _____
Dan A. Gattis, County Judge

Attest:

By: _____
County Clerk

EXHIBIT A
DESCRIPTION OF THE LAND

TRACT 1: Being all of that certain tract or parcel of land containing 83.305 acres, more or less, situated in the William J. Baker Survey, Abstract No. 64, Williamson County, Texas, the William J. Baker, Abstract No. 2695, in Travis County, Texas, said tract to be more particularly described by metes and bounds on the Survey.

TRACT 2: Being all of that certain tract or parcel of land containing 50.462 acres, more or less, situated in the William J. Baker Survey, Abstract No. 64, Williamson County, Texas, said tract to be more particularly described by metes and bounds on the Survey.

